SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

THE CITY OF BREMERTON,
a Municipal Corporation,
Plaintiff,
vs.
WILLIAM J. SESKO and NATACHA SESKO, and their marital community,
Defendants.

No. 97-2-01749-3

Memorandum Opinion

THIS MATTER comes before the Court following remand pursuant to the Division II Court of Appeals Decision No. 33519-4-II. The City is represented by Mark E. Koontz, Assistant City Attorney. William Sesko (deceased) and his wife Natacha, the defendants, are represented by Alan S. Middleton. A bench trial was conducted January 29–February 1, 2008, and the matter was taken under advisement to address the following issues raised by the Seskos.

1. **The Application of the "Sales Under Execution" Statutes**

RCW 7.48.280 specifies that "[t]he expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution." The Seskos contend that this means that RCW 6.21, titled Sales Under Execution, applies to the City's nuisance action because that is the only way to

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assure proper credit to the property owners for materials removed from their land. However, the Court finds that RCW 6.21 does not apply to the proceedings in this case for a number of reasons.

First, the provision of RCW 7.48.280 cited by the Seskos refers to abatement pursuant to warrants, and the City has not sought a warrant of abatement in this action nor was it argued before the Court of Appeals. Second, even if the provision cited referred to abatement proceedings more generally, the sentence uses the permissive word "can" rather than the word "shall." This word choice reflects courts' broad authority in conducting abatement proceedings. Finally, RCW 7.48.250 allows for judicial orders of abatement as well as warrants of abatement (to which RCW 6.21 might possibly apply). Because the Washington State legislature has provided more than one method of abatement, it is likely the legislature concluded that more than one method would ensure proper credit to property owners for materials removed from their land.

2. Sum Certain Contract Versus a Price Based on the Volume of Property Removed

The original contract price for clean up of both parcels was $158,571.54. This amount factored in labor, hazardous waste testing, the salvage value of the property removed, and an 8.2 percent sales tax. The contract contemplated the Seskos' right to tag and remove property from the two sites.

As a result of the Seskos' clean up efforts, the salvage value of the property was reduced. The City responded fairly and reasonably by modifying the contract with Buckley Recycle Center (BRC) to take into account the reduction in the contract value as well as the reduction in the amount of labor required to remove the property. If the City were held to the original contract price, the Seskos would also lose the benefit of the reduced labor calculated for removing less property.

3. Bid Solicitation Process

The Seskos contend that by soliciting bids from contractors who could remove the property as well as purchase it, the pool of potential bidders was small and the resulting bid accepted by the City was lower than if removal and sale were two separate bid transactions.

In this case, eight companies bid to remove and purchase the salvage property, and the City accepted BRC's bid, which was the lowest bid for the cost of removal. BRC's bid also provided the highest salvage value estimate for the salvage property. Additionally, the accepted bid was 38 percent less than the City's engineer's estimate for removal of the salvage property. The bid also provided for a larger offset for salvage value than estimated by the City engineer's office.

Additionally, the Court finds that the City did have the requisite incentive for an arm's length transaction because the City had to pay up front to abate the nuisance; recoupment was not automatically assured, nor was it a foregone conclusion.

4. Ownership of the Property Removed from the Parcel

RCW 7.48 does not address ownership of property removed pursuant to an abatement action. However, though not explicitly deciding ownership, the December 15, 2000, order clarifying the original injunction includes a provision for crediting the Seskos for any salvage value for the property. Also, the contract entered into between the City and BRC provided that all property removed by BRC belonged to BRC for salvage purposes.

Moreover, the Seskos had a means of retaining ownership over the property: they could have removed any property they wished to keep. In fact, they did just that by removing (by their estimate) half a million dollars worth of property. This behavior suggests that they were fully aware that if they did not remove the property, they would no longer own it. The Seskos had countless opportunities to comply with court orders to clean up their land. This last minute push to remove property suggests more than a change of heart and a desire to comply; it suggests awareness that property removed would no longer belong to them. Incidentally, it appears that even the Court of Appeals assumed the property no longer belonged to the Seskos in light of its mandate to this Court to determine a salvage value for the property.

Conclusion

Throughout this process, the City gave the Seskos a lengthy amount of time to abate the nuisance on their land, yet the Seskos did not begin to comply until the eleventh hour despite their affirmative obligation to do so. They had many opportunities to relocate

and/or sell the property on their land; either of these options would have guaranteed that they would retain control over the property and maximize the return on their investment. Because they did not abate the nuisance themselves, they lost exclusive control of the property and the ability to determine the value of their property. They are not, however, completely without a remedy: statutes and court orders were followed throughout this process to ensure as full and fair property valuation as possible. Here, the City solicited bids from a broad enough base so as to give the bid process and subsequent prevailing bid validity. The City chose not only the lowest bid made, but also the bid which provided for the highest salvage value for the property removed.

In weighing the evidence, the Court was originally concerned about the opportunities for self-service: the City's self-service at the Seskos' expense, BRC's self-service at the expense of the City and the Seskos, and the Seskos' ability to help themselves to anything they wanted regardless of whether that would impact the contract price. As stated above, the Seskos did have many opportunities throughout the years to remove any property they wanted to keep. So, the opportunities for self-service were numerous. The Seskos were successful in removing significant amounts of property—by their own estimate, one-half million dollars worth.

The real difficulty in analyzing this case relates to the value of the salvage. The Court previously addressed the issue of ownership of the property, and the Court reiterates that neither the contract nor the Court of Appeals decision read the nuisance statute to mean that BRC would "remove, relocate and store" all the material *for the Seskos' benefit*. As Ms. Sesko indicated, one person's treasure is another person's junk—hence, the whole reason for the lawsuit and abatement of the nuisance.

The Seskos claim they removed a half-million dollars worth of property, so inferentially there has to have been between one-half and one-million dollars of property remaining. The highest salvage value given was BRC's bid allocating $65,000.00 for the two properties. The other bidders treated salvaging the property (with an average bid value to be approximately $9,800.00) as more of an impediment than an asset. Given the mandate from the Court of Appeals to determine whether the City's action to abate the

nuisance followed the Court's order requiring deduction of any salvage value from the cost of abatement, the Court finds that not only did the City follow the Court's order, it explicitly incorporated salvage into the bid process and required a value for salvage: bids were valued at cost of abatement less the salvage value of the property.

In this case, the contract salvage value was reduced by the removal of property by the Seskos. On the other hand, examining Exhibit 17, the Court is satisfied that the $4,750.00 for the Arsenal Way salvaged equipment was probably a very conservative and low value. Nevertheless, the City acted in good faith. As evidenced in Exhibit 1, the City deducted from the contract price the expenses not incurred in removing equipment the Seskos removed on their own, something over and above the bid process and contractual terms.

Credible evidence clearly demonstrates that an appropriate salvage value was taken into account as an offset against the cost of abatement. Moreover, not only was salvage value contemplated in the bid process and subsequent contract, a reduction in the cost of removal was credited to the Seskos as well. While the Court believes that the credit calculated for the salvage value is probably low for the Arsenal Way equipment, that credit is the only concrete evidence the parties provided to the Court. To substitute another value such as that suggested by Ms. Sesko would require this Court to engage in impermissible speculation. Therefore, the value given in Exhibit 17 stands as the value of the salvage property.

The Court finds the City has accounted for salvage value credited against the cost of abatement.

Dated: February 13, 2008.

JUDGE JAY B. ROOF

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Re:	Bremerton v. Sesko	**CC:**	

Please find attached a copy of the Memorandum Opinion in this case.

If you have any questions, please contact me at 360-337-4465.

Thank you,

Ingrid Mattson
Law Clerk to Judge Jay B. Roof